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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

September 6, 1994

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: *RM-8496 - Pacific Bell Petition For Rulemaking to Amend Section 69.106 of the Commission's Rules*

On behalf of Pacific Bell, please find enclosed an original and six copies of its "Reply Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Jo Ann Goddard / Afc

Enclosures

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SEP - 6 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Pacific Bell Petition for Rulemaking to Amend
Section 69.106 of the Commission's Rules

RM-8496

REPLY COMMENTS OF PACIFIC BELL

Pacific Bell files these replies to comments filed in opposition to our Petition for Rulemaking to establish a flat-rated call set-up charge in addition to a per minute charge for local switching. A few common themes were raised by commenters, and we will address those first. Then we will address some of the idiosyncratic arguments made by various commenters. None of the arguments presented should prevent the Commission from opening the rulemaking.

None of the commenters disputed the central point raised in our Petition -- that it costs more to set up a call than to keep it in place during the duration of the call. It is this central fact that caused us to seek this rule change, and it is this central fact that has caused the uneconomic pricing structure in the local switching rate element.

Many of the commenters have pointed to the need for fundamental access reform.¹ We agree. However, commenters acknowledge that the unraveling that needs to take place to achieve appropriate access reform is complex and will be a time-consuming process.² There is no reason why the Commission cannot allow this very small change in existing Part 69 rules to take effect while it is considering the weightier issues. In fact, we suggest that the Part 69 rule change sought be termed an "interim" rule, pending complete access reform.³ When costs are knowingly being recovered in an inappropriate manner, the Commission should not ignore a relatively simple fix for the sole reason that comprehensive access reform will be considered at some point.

Transaction providers such as First Financial Management, CompuServe, and National Data Corporation filed comments hinting that the information highway will come screeching to a halt if this rate structure is imposed.⁴ This rate structure, on the contrary, seeks merely to promote efficient and economic pricing of services. Fair pricing is a linchpin to an economically sound marketplace. Allowing us to impose a flat-rated call set-up charge to recover the discrete costs associated with this network use will require the cost-causer to pay for those costs. If this alone brings the information superhighway to a dead end, then the much

¹ For example, Financial Service Providers, p. 1; Ad Hoc, p. 2; AT&T, p. 2; GTE, p. 4.

² Id.

³ Financial Service Providers argue that local transport needs to be examined in conjunction with this local switching restructure. The comprehensive access reform proceeding is the more appropriate forum for that examination.

⁴ Indeed, Transaction Network Services alleges that this is likely even if the Commission opens the rulemaking!

touted superhighway is doomed. It is nearly impossible to believe that the transaction providers can seriously argue that if they had to pay for the costs they actually incur (as opposed to the subsidy enjoyed today), then they would go out of business. If the current landscape of transaction providers cannot exist in a non-subsidized environment, then it is appropriate that they cease business and make room for more innovative businesses that can exist without subsidy.⁵

Another recurrent argument raised by commenters is that establishing a call set up rate element will somehow undermine the Commission's policy of preventing uneconomic bypass.⁶ "Uneconomic bypass" occurs when a user abandons the public network for less efficient alternatives because of artificially high prices.⁷ The current rate structure encourages uneconomic bypass by customers with long duration calls. Their rates are artificially high because they are subsidizing the transaction providers' very short calls that do not recover their costs. There is no "uneconomic bypass" feared from the transaction providers. Once a call set up rate element is in place, the minutes-of-use rate of local switching will fall. Any bypass that then occurs by transaction providers will be "economic" -- the bypass will take place despite the existence of an appropriate rate structure in line with costs. "Cost-

⁵ CompuServe argues that it makes very efficient use of the network because it only uses the network for very short durations. However, since these short calls require the network to perform many expensive call set ups for which we are not compensated, it is difficult to see how this is an economical use of the network.

⁶ See, e.g., Financial Services Providers, p. 9; CompuServe, p.9.

⁷ MTS and WATS Market Structure, 93 F.C.C. 2d 241, 274-5 (1983).

based rates provide correct signals to the marketplace.”⁸ Economic bypass is nothing to fear.⁹ It is the sign of a working competitive marketplace.

A few parties try to demonstrate that Pacific failed to meet its burden in showing that no adverse effect on competition will flow from this rule change.¹⁰ The analysis is obvious in the outline of the problem. Competition is dependent on fair, cost-based pricing. Indeed, the antitrust law was developed to police and remedy departures from this tenet. Moving to a better rate structure which ensures cost-based pricing cannot hurt competition. And, since access charges apply to all marketplace participants, without discrimination between customers, the marketplace is protected. Economic based pricing is not contrary to competition.

Some commenters appear to take issue with the costs noted in our Petition.¹¹ Those costs have undergone intense scrutiny by the California Public Utilities Commission, and that Commission's recent proposed decision establishes a bifurcated local switching rate based on call set up and minutes-of-use using our cost study.¹² The rate for interstate call set up has obviously not been set, but will be set in accordance with price cap restructure rules for revenue neutrality.

⁸ *Id.* at 275.

⁹ “While we do not want to encourage uneconomic bypass, we also do not want to impede economic bypass.” MTS and WATS Market Structure, 97 F.C.C.2d 978 (1983). See also Southwestern Bell Telephone Co., 1986 FCC Lexis 3977.

¹⁰ For example, First Financial Management, p. 9.

¹¹ MCI, p. 4; Ad Hoc, p. 10.

¹² I. 87-11-033, Draft Decision dated July 17, 1994, Finding of Fact #88, Conclusion of Law #95.

Individual Responses

First Financial Management claims that the call set-up charge would recover costs disproportionately from the most efficient users who have invested in their networks so that “busy” or “no answer” calls are minimized.¹³ On the contrary, “busy” or “no answer” call set ups would only be assessed against the party responsible for those costs. They are not spread among all providers.

AT&T and TNS appear to want various exemptions from call set up charges on 800 calls.¹⁴ However, 800 calls are simply one type of Feature Group D call. All Feature Group D calls incur similar costs for call set up, and therefore should be rated to recover the same. TNS appears to argue that the query charge for the 800 database dip is in some fashion redundant to the call set up charge. But, the 800 query recovers only those costs associated in suspending the call, querying the database and receiving the information for routing. The call set up charges, on the other hand, recover the costs associated with setting up the call with the carrier noted by the database. The same costs are involved whether a call is an 800 call or a run of the mill long distance call.

What most carriers seems to misunderstand is that this change in rate element would be a revenue neutral restructure within Price Caps so that those customers using the network for an average call duration will not see a rate change. AT&T claims that we would be overcompensated if this rate structure were allowed

¹³ First Financial Management, p. 5.

¹⁴ AT&T, p. 6; TNS, p. 5.

to take effect, and that some way to curb revenue should be effected.¹⁵ What AT&T seeks is a return to rate of return ratemaking where a true up of rates and demand occurs yearly to assume constant revenue. Such is not the current regulatory framework. And, the price cap banding rules limit "overearnings." No other mechanism is needed.

Under price caps rules, the restructure of the local switching rate element into two rate elements, one for call set up and one for call duration, would need to be revenue neutral, i.e., the overall revenue from local switching could not increase or decrease as a result of the restructure. The creation of a new rate element to recover the costs of call set up would therefore require that the existing minutes-of-use rate be lowered to ensure revenue neutrality in the local switching basket.

Ad Hoc seems to believe that the proliferation of short calls, which don't recover their rates, is only a problem if they account for a substantial part of our access usage.¹⁶ What Ad Hoc misses is that because call set up is measurable, with discrete costs, any calls which are subsidized are uneconomic. Even if we had only 100 calls less than 1 minute in duration, this rate structure would be justified under economic theory. Thus, the number of short calls is irrelevant. The relevant issue is that cost causers should pay their freight on the information superhighway.

¹⁵ AT&T, p. 5. AT&T's analysis of messages and minutes illustrates the increase in short duration calls (messages increasing faster than minutes).


¹⁶ Ad Hoc, p. 9.

Conclusion

Our Petition simply tries to bring our rate structure in line with costs. Doing so will allow the marketplace to react in an economically sound manner. If, as the transaction providers have argued, this will cause them to leave the public switched network, so be it. The current situation, in which we lose money on each of their calls, is not to our advantage, and must be changed.

Respectfully submitted,

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Date: September 6, 1994

CERTIFICATE OF SERVICE

I, Alex Kositsky, hereby certify that copies of the foregoing "REPLY COMMENTS OF PACIFIC BELL" regarding RM 84-96 were served by hand or by first-class United States Mail, postage prepaid, upon the parties appearing on the attached service list this 6th day of September, 1994.

BY: _____


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